

## **COMPETITIVE GRANT PROCEDURE FOR PROTEST**

This Procedure is to be utilized when an applicant – who submitted a proposal in response to a New York State Department of Transportation (“Department”) competitive grant solicitation – was not designated for award (“Unsuccessful Applicant” or “Protestor”) and elects to protest.

An Applicant, by submitting a proposal, expressly agrees to the limitations of their rights to protest set forth herein and acknowledges that the Department does not afford an appeal to any protest determination.

### **TIMELY SUBMITTAL**

An Unsuccessful Applicant may submit a protest within four (4) business days of the delivery/receipt of a Funding Notice Letter (including notices delivered via electronic mail). The Department is not obligated to review any protest received after 4 business days of delivery/receipt of a Funding Notice Letter.

### **WRITTEN PROTESTS ONLY**

All protests must be in writing. Protests shall be submitted to the Department’s Designated Contact identified in the Notice of Funding Application (NOFA) and/or within the application result Funding Notice Letters (“Designated Contact”).

Any protest not set forth in writing and delivered within the time limits specified in these procedures shall not be considered.

### **PROTEST CONTENTS**

- A) All protests **must** include the following to be considered by the Department:
  - 1) The NOFA solicitation identification (e.g. “2022 Section 5310”);
  - 2) The name and address of the Unsuccessful Applicant;
  - 3) A detailed statement of the nature of the protest and the grounds on which the protest is made;
  - 4) All factual and legal documentation in sufficient detail to establish the merits of the protest; evidentiary statements must be provided under penalty of perjury; and
  - 5) A summary of the remedy being requested.
- B) The Unsuccessful Applicant must demonstrate a clear violation of the procurement or violation of a specific law, regulation, or procedure.
- C) The Department will not be obligated to suspend or postpone the procurement process in any manner while considering the merits of the protest.

The Department shall not be liable for payment of the Protestor's costs, including, but not limited to, legal and consultant costs and fees.

## **PROTEST REVIEW**

Unsuccessful Applicants **must** first undergo a debriefing prior to the Department reviewing the protest, regardless of whether the Unsuccessful Applicant requested a debriefing. However, an Unsuccessful Applicant's failure to submit a request for a debriefing will in no way impact the outcome of their protest. No discussion regarding the protest shall occur during the debriefing. If, within 2 business days after the debriefing, the Protestor wishes to withdraw their protest or amend their protest, they may do so by written notification to the Department's Designated Contact.

The Department's Designated Contact will review the protest. No hearing will be held concerning the protest. The Department shall, with the advice and counsel of an attorney in the Office of Legal Affairs, issue a written determination as to the merits of the protest submitted by making findings of fact on the basis of the written submissions. The Department's determination shall be final and conclusive.